

**UNITED STATES DISTRICT COURT  
IN THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

Everett C. Williams et al.,	§	
Appellants,	§	
	§	
v.	§	C.A. No. C-06-314
	§	
Michael B. Schmidt,	§	
Appellee.	§	

**MEMORANDUM OPINION AND ORDER DENYING APPELLANTS' MOTION  
FOR STAY**

Before the Court is appellants' motion to stay the adversary proceeding against them in the bankruptcy court during the pendency of their appeal to this Court. (D.E. 2). Appellants appeal the bankruptcy court's order granting summary judgment in favor of appellee and foreclosing on appellants' house, which is located at 6229 Denain Drive, Corpus Christi, Texas (the Denain House).


The four criteria to be applied when considering a motion to stay a case pending appeal are: (1) whether the movant has made a showing of likelihood of success on the merits; (2) whether the movant has made a showing of irreparable injury if the stay is not granted; (3) whether the granting of the stay would substantially harm the other parties; and (4) whether the granting of the stay would serve the public interest. *In re First South Sav. Ass'n*, 820 F.2d 700, 709 (5th Cir. 1987).

Appellants fail to meet the first of these criteria; i.e., they fail to show that it is likely that they will succeed on the merits of their appeal. Appellants offer no persuasive

evidence from the bankruptcy record showing that summary judgment was incorrectly granted. According to the evidence now before the Court, it does not appear as if appellants made a single payment on the Denain House. At the very least, appellants were significantly behind in their payments. Appellants offer no evidence in support of their defenses against foreclosure except for a brief, conclusory affidavit. Therefore, the Court finds that it is unlikely that appellants will succeed in their appeal of the bankruptcy court's decision.

Accordingly, appellants' motion for stay pending appeal is denied.

Ordered this 31 day of July, 2006.

  
HAYDEN HEAD  
CHIEF JUDGE